

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1230 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

JESHANGBHAI BHEMJIBHAI DAVE

Versus

TRUSTEE/MANAGER ADARSH NIVASI SCHOOL & ANR.

Appearance:

MR RA MISHRA for Petitioner
NOTICE SERVED for Respondent No. 1
MR RJ OZA for Respondent No. 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 11/04/2000

ORAL JUDGEMENT

I have heard Mr. R.A.Mishra, learned counsel for the petitioner and Ms.B.R.Gajjar, learned Assistant Government Pleader for the Government Solicitor Shri R.J.Oza on behalf of the respondent. The petitioner filed this writ petition claiming relief that he should be continued as cook in Social Welfare Department of the Government. Mr. R.A.Mishra, learned counsel for the

petitioner submitted that in Annexure : A, Principal of the School has certified that the petitioner is working as cook on the basis of daily wages from December 1986 to October, 1989, except for few months when the school was on vacation. Learned counsel for the petitioner further submitted that even though the petitioner was engaged on daily wages, he was paid wages at the end of every month, and therefore, for all practical purpose, engagement of the petitioner can be treated as temporary Government employee. It is further submitted by the learned counsel for the petitioner that since the petitioner has worked as the cook for about three years, his services should have been regularized by the Government, and he should have been continued and the termination of service of the petitioner or disengagement of the petitioner from the post of cook is an illegality and he should be reinstated and continued in service on the post of a cook.

2. Ms. Gajjar, learned Assistant Government Pleader for Government Solicitor Shri R.J.OZA appearing for the State submitted that regular appointment can only be made in the post of a cook in accordance with the recruitment rules framed by the Government on 19th September, 1983. It is submitted by the learned Assistant Government Pleader that in the present case, the petitioner has not been appointed in accordance with the provisions of the recruitment rules. On the other hand, it was an appointment on the basis of daily wages and even though the payment was made on monthly basis, the petitioner did not work for entire days i.e. from December, 1986 to October 1989. It is also submitted by the learned Assistant Government Pleader that in the intervening period, the petitioner was not continued even on daily wages for some months from the aforesaid period in between December, 1986 to October, 1989.

3. Learned counsel for the petitioner submitted that the petitioner did not work for a few months during aforesaid period in between from December, 1986 to October, 1989. Learned counsel submitted that during that period, the school was on vacation and hostel was also closed, and therefore, the petitioner did not work. Be that as it may. It appears that the petitioner was not appointed in accordance with the recruitment rules framed by the Government for the post of cook, and he was only engaged as cook on daily wages. Learned counsel for the petitioner submitted that no appointment order is issued in favour of the petitioner on the post of a cook. In view of the above position, it cannot be said that the petitioner was regularly appointed in the post of a cook in accordance with the recruitment rules framed by the

Government. Therefore, engagement of the petitioner as a daily wager cannot be treated as temporary appointment and since the petitioner has been engaged on daily wages, he did not acquire any right on the post of a cook, and therefore, termination of the petitioner or disengagement of the petitioner from working as a cook do not appear to be illegal or unjust. I do not find any merits in the writ petition and it deserves to be dismissed and accordingly, it is dismissed, but I make no order as to costs.

Date: 11/4/2000. (P.K.SARKAR,J.)

ccshah